

B. Courts of General Jurisdiction

1. Jurisdiction

As discussed in Chapter 1, the courts of general jurisdiction are the “ordinary” or general courts. Unlike the arbitrazh courts and the Constitutional Courts, which have a limited jurisdiction defined by the laws governing their structure and procedure, the courts of general jurisdiction are the default forum for any matter that is capable of being heard by a court. Their jurisdiction is defined not by positive description, but rather as all cases and issues not specifically assigned to the jurisdiction of another body — such as the arbitrazh courts or the Constitutional Court.⁴ Legal provisions governing the jurisdiction of the courts are extremely broad, reflecting this conception of the courts’ function.

In understanding and interpreting these provisions, it is important to keep in mind that they were written in 1964, and although amended in later years, have not been updated to deal with many intervening changes. In particular, the reference in the second paragraph of Article 25 to assignment of cases “to the jurisdiction of administrative or other bodies” and its lack of reference to the possibility of assignment to “courts” does not indicate dual or alternative jurisdiction between the arbitrazh courts and the courts of general jurisdiction. At the time of the Code’s passage, the general courts were the only courts in the country. State arbitrazh would have qualified as an “administrative or other body” under this paragraph of Article 25, and the currently existing arbitrazh courts qualify as “other bodies” under that same provision.

Similarly, the last paragraph of Article 25 states, the courts of general jurisdiction are to consider cases in which foreign parties of any type participate. The paragraph in which this statement appears is not qualified by a reference to the possible assignment of the cases to “other bodies.” However, as was discussed in Section A of this Chapter, Article 22, point 6 of the Arbitrazh Procedure Code gives the arbitrazh courts jurisdiction over cases with foreign participants which are otherwise within their jurisdiction under the Code. Some authors have suggested that this language produces a conflict or overlap which would allow the general courts to serve as an alternative forum for any disputes in which a foreign business entity participates.

Although the language of the relevant portion of Article 25 is broad, the paragraph containing that language cannot be read in isolation from the remaining portions of the Article or its history. At the time of its passage, and through 1995, the bodies of state arbitrazh (and later the arbitrazh courts) were specifically denied jurisdiction over cases involving foreign parties. The passage of the new Arbitrazh Procedure Code in 1995 would either qualify as the assignment of these cases to “another body,” exempting them from the courts’ jurisdiction, or if that provision does not apply, as the later passage of a different legal rule, effectively amending the prior rule stated in the Civil Procedure Code. (The general principles of interpretation require that a later-passed law has priority over an earlier-passed law at the same level in the hierarchy of legal acts.) Such an

interpretation does not deprive the existing paragraph of application. The general courts, must, of course, retain the ability to consider cases in which foreign firms participate as parties in order to consider cases in which private individuals sue such companies or those cases which are specifically excluded from arbitrazh court jurisdiction (e.g. the challenge of a normative act by a foreign enterprise).

2. Commercial Cases Heard by the Courts of General Jurisdiction

The broad jurisdiction of the general courts includes all criminal cases, civil disputes concerning citizens who are not individual entrepreneurs, and appeals of administrative and other state action which do not fall within the jurisdiction of the other courts. Cases establishing facts having legal significance with respect to citizens (such as recognition of a person as dead or as legally incompetent), cases concerning family matters (custody of children, division of property), inheritance issues, and a variety of other concerns fall within the jurisdiction of the general courts.

The majority of this jurisdictional list relates to individuals and their personal concerns and disputes. This is not surprising, as the jurisdiction of the arbitrazh courts, discussed above, covers most standard types of business activity. However, there are a few types of cases which are of particular relevance to commercial activity that currently fall within the jurisdiction of the courts of general jurisdiction, rather than the arbitrazh courts.

The first of these is the appeal of normative acts — that is, regulations or rules that have a general binding force — which the appealing party believes to be inconsistent with a law or with legal rules of superior force. Such rules may include regulations on the application of customs rules, rules concerning the conduct of production or sales activities, and any other rules of general application in the commercial context. As discussed in section A.3, above, the jurisdictional provisions of the Arbitrazh Procedure Code state that the arbitrazh courts consider only cases concerning non-normative acts of state bodies, unless the review of particular normative acts is specifically assigned to the arbitrazh courts by a legislative provision. This leaves most cases concerning normative acts, even if such acts regulate purely commercial issues and the complaint is being filed by a legal entity against a state body, within the “default” jurisdiction of the general courts.

The second category of cases having commercial significance but falling into the jurisdiction of the general courts is those cases in which an individual who is not a registered entrepreneur participates as a party. Disputes among the founders of a legal entity, where one of those founders is an individual, would fall into this category. Disputes arising from the conduct of a company or its officers may also fall into this category if the complaint is brought by an individual who is not a registered entrepreneur (for example, an individual share holder), although the same complaint would have to be filed in the arbitrazh courts by a legal entity holding shares in the same company. Cases in which the rights of individuals will be determined by the outcome, so that these

individuals may be necessary parties or have the right to participate as third parties, will also fall into the jurisdiction of the general courts, since the arbitrazh courts do not hear such cases.

3. Expectation of Legislative Change

Jurisdiction and procedure in the courts of general jurisdiction is currently defined by the Civil Procedure Code (also referred to hereinafter as the “CPC”) of the RSFSR. The CPC was adopted in 1964 and has been extensively amended over the ensuing thirty-five years, including a significant set of amendments in 1995. Despite the extensive amendments, however, many portions of the CPC contain provisions which are clearly obsolete and refer to institutions or rules of law no longer in existence or effect.⁵ Other rules are not obsolete “on their faces,” but are presumably not subject to application due to their inconsistency with laws passed at a later time. The passage of a new Code of Civil Procedure has been expected for some time, and drafts of the new Code have been circulated. However, the difficulties discussed earlier concerning the nature and roles of courts of the subjects of the Federation have delayed any definition of the hierarchy and organization of the courts. Because the procedure code relies heavily on this hierarchy and organization in defining the powers of courts, grounds and hierarchies for appeal, and appeals procedures, the new procedural code is likely to be delayed until the matter is resolved.

4. Procedures for Submission and Consideration of a Complaint

Because the general courts have a limited jurisdiction over disputes related to commercial activity, and in consideration of the uncertainties associated with the state of the procedural legislation, this Handbook does not provide extensive detail concerning procedures in the general courts. It may be noted, however, that the types of commercially-related cases that are currently subject to the jurisdiction of the general courts are either not capable of transfer to an arbitration tribunal (those concerning the validity of regulation or other normative act) or are far less likely to be transferred than other commercial cases (cases concerning private individuals, with whom arbitration agreements are less likely to be concluded). For this reason, there may well be no alternative forum available, and a general overview of the procedures of the courts will be provided here.

Because of the wide variety of cases heard by the courts of general jurisdiction, the Civil Procedure Code contains many special provisions not related to types of disputes most likely to be of commercial interest. Both types of cases that are of interest — civil cases with individual participants and administrative cases challenging a legal act — are subject to the general rules of the CPC. These rules, although generally similar to those which apply in the arbitrazh court, do contain a number of important differences. Many of these are due to the difference in the dates of passage of the two codes. Some differences, however, may reflect a more solicitous attitude toward the individual citizens

⁵ See, e.g., Article 26 of the CPC on the transfer of cases to “comrades courts.”

who are the common users of the general courts in civil cases and who may not be legally sophisticated or well provided with legal counsel. In addition to the general rules, there are two special chapters of the CPC (Chapters 24 and 24¹) providing some additional special rules for the consideration of administrative cases.

Civil cases are filed in a written form, which must contain a list of information contained in the CPC, and must be accompanied by payment of the filing fee. Filings are reviewed by a single judge for acceptance, who may reject them if they are fatally flawed. If a correctable error in the filing exists, the court keeps the filing and notifies the petitioner about the error, providing a period for cure. An accepted case will generally be considered by a three-judge panel of a district or city court, in the location of the respondent or that agreed by contract, in an open court session.

Procedures are relatively direct and simple, and the court is required to explain to the participants what their rights are in the process. As mentioned above, however, quite a number of provisions remain in the Code that appear to be outdated. For example, the Code provides that social organizations and labor collectives (not parties to the case) have the right, with permission of the court, to take part in the consideration of a case for the purpose of making their views on the case known to the court. Periods for the preparation and hearing of the case by the court are extremely limited. The court is given a general seven-day period for preparation of cases, which may be extended to twenty days for complex cases. For those types of civil cases which may have commercial interest, a decision is to be issued by the court within a month of completion of the preparation of the case. These periods may be somewhat lengthened, due to suspensions in the proceedings in the case according to the rules of the Code.

A number of special rules are applicable to the consideration of administrative cases concerning a challenge to normative acts. The relevant chapter of the CPC gives an aggrieved person the right either to make recourse directly to the court or to a body or official superior to the one which issued the challenged act. If a complaint is made to the superior body, the body or official is required to respond within a month. If the relevant body or official rejects the complaint, or if no answer is received, a complaint may be filed with the court. The rules provide for a very short time frame — 10 days of receipt of the complaint — for consideration of the case by the court. If the court finds the normative act, or a part of it, to be illegal or improper, that act or portion of the act is considered from the time of the issuance of the opinion to be without effect.